

REMARKS

I. Status of the Application

Claims 20-96 are pending in the present application. Applicants have herewith amended claims 20-32, 34, and 38-40, canceled claims 33, 35-37, and 44-96 without prejudice, and added claims 97-143. The claim amendments and the newly added claims are supported by the application as filed and therefore do not add new matter. Accordingly, entry of the amendments and of the newly added claims is respectfully requested.

Applicants submit herewith a substitute specification and additional drawing sheets which include portions of the specification and figures that were inadvertently omitted with the filing of the present application. The omitted material is completely contained in the prior filed U.S. Patent Application no. 09/184,571 (Patent No. 6,505,174) from which the present application claims priority under 35 U.S.C. § 120 and which was incorporated by reference into the present application in the Transmittal Letter.

The differences between the substitute specification submitted herewith in Appendix B and the specification of the present application as originally-filed may be found in the Summary of the Invention and Detailed Description sections along with new FIGS. 7-18. These differences are shown in the marked-up version of the substitute specification submitted herewith in Appendix A. Support for the differences in the Summary of the Invention section may be found at pages 2-10 of the priority patent and the differences in the Detailed Description section may be found at pages 27-48 of the priority patent. New FIGS. 7-18 correspond to FIGS. 7-18 of the priority patent. The substitute specification and the additional drawing sheets do

not contain new matter. Accordingly, entry of the substitute specification and the additional drawing sheets is respectfully requested.

## II. Summary of Office Action

The February 15, 2006 Office Action (hereinafter "Office Action") rejected claims 20-96 under 35 U.S.C. § 102(e) as being anticipated by Lupien U.S. Patent No. 6,012,046 (hereinafter "Lupien"). Applicants respectfully traverse the rejection.

## III. Applicants' Reply

### A. Independent Claims 20 and 112

Independent claims 20 and 112 refer to a method and a system, respectively, for trading a derivative financial instrument. At least one order to buy or sell the instrument is received. The instrument is related to an item having a plurality of stages of development comprising at least one pre-release stage and at least one post-release stage. The method and system *trade the instrument at a price that is determined based at least in part on the development stage of the item at a time of a trade.*

In contrast, Lupien is directed toward an automated crossing network (also known as a matching system) for matching buy and sell orders. (See Lupien, Field Of Invention). Lupien allows a user to create a satisfaction density profile for a bid or an offer. The satisfaction density profile indicates how satisfied the user would be if a bid or offer were hit or lifted at pre-determined market prices. The satisfaction density profile may be represented as a contour plot on a two-

dimensional grid. Price is represented on the vertical axis and quantity is represented on the horizontal axis. Satisfaction density values for each price and quantity can be a number between and including 0.0 and 1.0. 0.0 represents no satisfaction (i.e., the user will under no circumstances trade that quantity at that price), and 1.0 represents total satisfaction. As can be seen in FIG. 2, the user's desire to purchase 20M shares of IBM at \$99 and \$101 is 1.0 and 0, respectively. (See Lupien, column 8, lines 16-26; FIG. 2).

After the user sets up the satisfaction density profile for a particular bid or offer, the user transmits the satisfaction density profile to a central matching controller ("CMC"). The CMC anonymously matches the bid or offer with other buy or sell offers based on the satisfaction density profile for the bid or offer transmitted by the user, satisfaction density profiles for other orders transmitted by other users, and the market price at which the securities reflected in the satisfaction density profiles are currently trading. (See Lupien, column 4, lines 24-45).

Lupien does not disclose or suggest a method or system that trades a derivative financial instrument at a price that is determined based at least in part on the development stage of an item at the time of the trade as recited by independent claims 20 and 112. Indeed, Lupien is silent as to any instrument related to an item that has a plurality of stages of development associated therewith that includes at least one pre-release stage and at least one post-release stage, such as a movie, product, or service. Lupien notes merely that its CMC is used to match buy and sell orders for "futures, derivatives, options, bonds, currencies, and the like". (Lupien, column 6, lines 2-3). Securities of these types are not the same as nor are they

analogous to the derivative financial instrument recited in claims 20 and 112.

The Examiner asserts, with reference to Lupien col. 5, lines 6-67, col. 6, lines 1-8, and col. 7, lines 15-53, that Lupien discloses a product having a plurality of development stages associated therewith and adjusting the price of the instrument based on the development stage of the product. (See Office Action, page 3). Applicants respectfully disagree. There does not appear to be any discussion in the broad citation proffered by the Examiner that can reasonably be interpreted to disclose the claimed subject matter, i.e., trading an instrument related to an item having a plurality of developmental stages associated therewith at a price determined based on the development stage of the product at the time of the trade. The Examiner refers to the same broad citation to reject all of claims 20-96. (See Office Action, page 2-15). In this respect, the Examiner is not articulating the rejections clear enough for a meaningful reply to the rejections. Accordingly, applicants respectfully request that the Examiner convey any future rejections with greater specificity.

In addition to failing to show or suggest executing a trade, Lupien further fails to show or suggest "determining a price for the instrument based at least in part on the development stage of the item at a time of a trade," as also recited by independent claims 20 and 112. Although Lupien includes a price discovery mechanism using the "spread region" between the buy and sell satisfaction density profiles, Lupien does not consider price discovery based on an item's development stage at the time of a trade. (See Lupien, column 11, lines 21-60).

It is well-established that for a reference to anticipate a claim "each and every element as set forth in the claim" must be found in the reference. *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). In summary, Lupien clearly fails to show at least 1) determining a price for a derivative instrument based at least in part on the development stage of the related item at the time of a trade and 2) executing a trade at the determined price.

For at least these reasons, Lupien does not anticipate applicants' independent claims 20 and 112. Applicants respectfully submit, therefore, that independent claims 20 and 112 are allowable over the current art of record. Applicants further submit that dependent claims 21-32, 34, 38-43, 97, and 113-129, which contain all the limitations of their respective base claims, are allowable for at least the same reasons.

B. Independent Claims 98 and 130

Independent claims 98 and 130 refer to a method and a system, respectively, for communicating a price for a derivative financial instrument. A request is received for information associated with the instrument. The instrument is related to an item having a plurality of stages of development comprising at least one pre-release stage and at least one post-release stage. *A price for the instrument is communicated in response to the request, whereby the price is determined based at least in part on the development stage of the item at a time of a trade.*

As described above, Lupien clearly fails to show or suggest determining a price for a derivative financial instrument related to an item with a plurality of stages of development based at least in part on the development stage of

Application No. 10/655,409  
Reply to February 15, 2006 Office Action

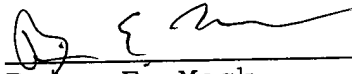
the item at a time of a trade. As a consequence, Lupien also fails to show or suggest communicating the price of the instrument determined as such in response to a request.

For at least these reasons, Lupien also fails to anticipate independent claims 98 and 130. Applicants submit, therefore, that claims 98 and 130 are allowable over the art of record. Applicants further submit that dependent claims 99-111 and 131-143, which contain all the limitation of their respective base claims, are allowable for at least the same reasons.

#### IV. Conclusion

In view of the foregoing, applicants submit that claims 20-32, 34, 38-43, and 97-143 are allowable over the art of record. This application is therefore in condition for allowance. Reconsideration and prompt allowance of this application are respectfully requested.

Respectfully submitted,



---

Brian E. Mack  
Registration No. 57,189  
Agent for Applicants

Fish & Neave IP Group  
Ropes & Gray LLP  
Customer No. 1473  
1251 Avenue of the Americas  
New York, New York 10020-1105  
Tel.: (212) 596-9000